

Appl. No. 10/529,568  
Amdt. Dated November 14, 2006  
Reply to Office Action mailed: August 14, 2006

### **REMARKS**

The present amendment is submitted in response to the Office Action dated August 14, 2006. Claims 17-40 are currently pending in the application, including newly added claims 37-40 and claims 28-36 which are withdrawn from consideration. Claims 17 and 26 have been amended. No new matter is believed to have been introduced by this amendment. In view of the above amendments and the following remarks, reconsideration and allowance of this application are respectfully requested.

Claim 26 was rejected under the second paragraph of 35 U.S.C. § 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 has been amended to recite "A tool assembly according to claim 25, wherein the body portion forms a distal end of a surgical stapling device" and now includes proper antecedent basis for "distal end." In view of said amendment to claim 26, it is respectfully submitted that the rejection of claim 26 under the second paragraph of 35 U.S.C. § 112, has been overcome and should be withdrawn.

Claims 17-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,816,471 to Plyley et al. (hereinafter "Plyley"). Plyley is directed to a surgical stapler having an approximation means for relative movement between:

Appl. No. 10/529,568

Amdt. Dated November 14, 2006

Reply to Office Action mailed: August 14, 2006

(1) a closed position (FIG. 3) in which the cartridge and anvil retention portions are in closely spaced relationship for clamping tissue to be stapled therebetween and (2) an open position (FIG. 1) in which the cartridge and anvil retention portions 14 and 16 are spaced farther from each other than in the closed position.

(Plyley, col. 11, lines 31-36).

In particular, Plyley discloses guide members 46 with a first proximal control groove 51 and a second distal control groove 53 to control the motion of the anvil. The leading portion 71 (e.g., distal end) of the anvil moves toward the closed position more rapidly than the trailing portion 73 (e.g., proximal end) to a partially closed position. (Id., col. 13, lines 16-20). The anvil assembly, as disclosed in Plyley, is configured to move only between an open and a closed position. The movement of the anvil from the open position to the closed position is described as “tip to tail” closure where the leading portion 71 of the anvil moves toward the closed position more rapidly than the trailing portion 73. (Id., col. 13, lines 53-58). Thereafter, the proximal end closes faster than the distal end to the closed position. Preferably, “the leading portion 71 reaches a fully closed position prior to the trailing portion 73.” (Emphasis added, Id., col. 13, lines 59-60). Consequently, the distal portion resists extrusion of tissue from between the cartridge and anvil portions.

Newly amended independent claim 17 recites a tool assembly including “first and second jaws being movable in relation to the other in response to an actuation stroke.” The tool assembly also includes an approximation member “to effect movement of the first jaw to

Appl. No. 10/529,568  
Amdt. Dated November 14, 2006  
Reply to Office Action mailed: August 14, 2006

approximate a distal end of the first jaw with the second jaw in a first portion of the actuating stroke, to move the distal end of the first jaw away from the second jaw in a second portion of the actuating stroke, and to bring together the first jaw and second jaw in substantially parallel closure in a third portion of the actuating stroke.” (Emphasis added). The Plyley stapler does not anticipate, teach or suggest moving the anvil portion between three positions, and does not anticipate teach or suggest moving the distal end of a jaw away from another jaw and bringing the jaws together in substantially parallel closure. Plyley merely discloses an approximation means which moves the anvil assembly between an open and a closed position, in “tip to tail” manner, i.e., the approximation means “fully closes” the distal end of the anvil and thereafter moves the proximal end to complete closure of the jaws, according to the so called “tip to tail” closure technique. (Id., col. 13, line 54).

It is respectfully submitted that Plyley does not anticipate, teach or suggest the recitations as proposed with respect to these claims. Namely, Plyley does not teach or suggest, a tool assembly having “first and second jaws being movable in relation to the other in response to an actuating stroke,” the approximation member being “movable to move the at least one cam surface in relation to the first and second cam followers to effect movement of the first jaw to approximate a distal end of the first jaw with the second jaw in a first portion of the actuating stroke, to move the distal end of the first jaw away from the second jaw in a second portion of the actuating stroke, and to bring together the first jaw and the second jaw in substantially parallel closure in a third portion of the actuating stroke,” as recited in amended independent claim 17.

Appl. No. 10/529,568  
Amdt. Dated November 14, 2006  
Reply to Office Action mailed: August 14, 2006

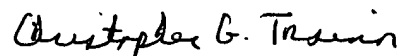
It is respectfully submitted that for at least the reasons specified above, independent claim 17 is clearly unanticipated and otherwise allowable over Plyley in light of the amendments and preceding remarks. Claims 18-27 and 37-40 depend from claim 17 and, as they include the limitations thereof, are also unanticipated and otherwise allowable over Plyley. Accordingly, it is respectfully submitted the rejection under 35 U.S.C. 102(b) of independent claim 17 (and claims 18-27 and 37-40 which depend therefrom) should be withdrawn.

In view of the foregoing, it is therefore respectfully submitted that all of the claims in the present application, namely, claims 17-27 and 37-40 are allowable over all of the art of record.

If the Examiner should have any questions or comments or would like to discuss the merits of the present application with Applicants' attorney of record or set up an interview at a convenient time for the Examiner, the Examiner is respectfully invited to contact Applicants' attorney of record at the phone number listed below at his earliest convenience.

Carter, DeLuca, Farrell & Schmidt, LLP  
445 Broad Hollow Road, Suite 225  
Melville, New York 11747  
Tel (631) 501-5700

Respectfully submitted,



Christopher G. Trainor  
Reg. No. 39,517  
Attorney for Applicant

**Correspondence address:**

Chief Patent Counsel  
United States Surgical,  
a Division of Tyco Healthcare Group LP  
195 McDermott Road  
North Haven, CT 06473